"The legal requirements for marriage with a *t'sai* (principal wife) or a *t'sip* (secondary wife) are, I think, the same. This means that the law of this Colony (Singapore) merely requires a consensual marriage i.e. an agreement to form a relationship that comes within the English definition of marriage. It is no longer any part of that conception that such a relationship must be life-long. It merely means one of indefinite duration ....."

"With these simple legal requirements the difficulties that have troubled the Courts have been merely questions of evidence. The burden of proof is upon whoever alleges the status of *t'sip* to have existed. What must be proved in order to discharge that burden? In most cases there is some sort of a ceremony, and there is recognition of the *t'sip* as a member of the husband's family. But this is evidentiary only. It is not essential to the acquisition of the status of *t'sip*. A formal contract in writing would be conclusive. If the parties were to live as such publicly so as to acquire the reputation of being man and *t'sip* that would also be evidence that the status had been acquired. On the other hand, I do not consider that mere cohabitation for a considerable period would by itself be sufficient evidence."

In my judgment I had to determine the issues not by Chinese custom exclusively but by the relevant portion of the law of Singapore applicable at the material time. That portion of the law of Singapore is a fusion of the principles and concepts of English law and Chinese custom. It did not matter in the least, therefore, that the caveator did not call an expert on Chinese custom to testify that Chinese custom would permit a Chinese to take two principal wives in the same place. In my opinion, as the deceased had a principal wife living in Singapore at the time he went through a ceremony of marriage with Quek Boo Lat, he could only take her as a secondary wife. Considering the fact that the deceased and Quek Boo Lat had agreed to become man and wife, it seemed unfair to me to relegate her to the position of a concubine merely because the position of principal wife which she intended to fill had been taken by someone else. Both justice and common sense required that she be accorded the status of a secondary wife. Such a conclusion seemed to me to be in accordance with the views expressed by Murray-Aynsley C.J. in the case cited by counsel for the caveator. There was a consensual marriage and there was a marriage ceremony. There was no recognition of Quek Boo Lat as a member of the husband's family, but that was not essential to the acquisition of the status of a secondary wife.

For the above reasons I decided that by her marriage to the deceased in 1940 Quek Boo Lat became his secondary wife, notwithstanding the fact that the ceremony they went through was appropriate for the purpose of marrying a principal wife; and that the caveator was the legitimate child of the deceased by Quek Boo Lat.

Order accordingly.

Solicitors:—*Osborne-Jones & Redrup; Donaldson & Burkinshaw.*

THOMAS v. ATTORNEY-GENERAL

[A.C.J. (Ainley C.J.) July 29, 1961]

[Sarawak — Civil Appeal No. 12 of 1960]

Costs—Appeal—Advocate appearing in person in appeal against an order of costs made against him personally—Appeal successful—Taxed costs awarded—Bill of Costs taxed by Registrar—Certain items taxed-off in entirety—Appeal against order of taxing officer—Sarawak, North Borneo and Brunei High Court (Scale of Costs) Rules 1959, r.10(2).

Costs—Advocate conducting his own appeal—Basis on which costs to be permitted—Rule in Chorley's case.(1)

There is no principle which ought to prevent a successful party who is an advocate and who does an advocate's work from being indemnified not merely for the time which he must necessarily spend as a witness in his own case but also for the pains, trouble and skill which he has to incur and to exercise in order to bring it to a successful conclusion.

Cases referred to:—

(1) *London Scottish Benefit Society* v. *Chorley, Crawford & Chester* (1884) 13 Q.B.D. 872; 53 L.J.Q.B. 551.

(2) *Read* v. *Gray* [1952] 1 All E.R. 241.

(3) *In re Wallis* (1890) 25 Q.B.D. 176.

(4) *Stone* v. *Lickorish* [1891] 2 Ch. 363.

(5) *Tolputt* v. *Mole* [1911] 1 K.B. 87; [1911] 1 K.B. 836, C.A.

COURT OF APPEAL RULING.

T. O. Thomas in person.

C. T. Tan (Crown Counsel) for the respondent.

Cur. Adv. Vult.

Ainley C.J.: This is an appeal from an order of a taxing officer brought under Rule 10(2) of the Sarawak, North Borneo and Brunei High Court (Scale of Costs) Rules, 1959*.

The appellant is an advocate of this Court. He appeared as an advocate in the case of *Fu Tze Man* v. *Attorney-General of Sarawak*† before the High Court. An order of costs was made against him personally in that case, and from that order he appealed successfully to the Court of Appeal. Taxed costs of the appeal were awarded to the appellant. The appellant conducted his own case before the Court of Appeal, in which case he was of course the litigant, and in his bill of costs which was taxed by the Chief Registrar of this Court, he included a number of items which could have been included with propriety only upon the basis that he was acting for a client, that is to say for himself. For

* Rule 10(2) reads:

"Any person affected by any order of a taxing officer may appeal therefrom to a Judge in Chambers. Such appeal shall be by notice in writing to attend before the Judge without fresh summons within ten days after the decision complained of, or such further time as may be allowed by a Judge. An appeal from the decision of a taxing officer shall be no stay of proceedings unless so ordered by a Judge."

† Unreported.

example, he included an item (No. 1) for drafting the grounds of appeal, and an item (No. 7) for "getting up" the case for appeal, and to neither of these items was objection made in principle. He further included four items (Nos. 8, 9, 10 and 11) which were grouped under the heading "Attendance in Court or Chambers". These items read —

"8.	On application for conditional leave	$ 10.00
9.	On application for final leave ..	$ 10.00
10.	On appeal	$200.00
11.	On Judgment being given ..	$ 10.00".

These items the Chief Registrar struck out, or taxed off in their entirety, because he considered that the principles laid down in the English Court of Appeal case of *The London Scottish Benefit Society* v. *Chorley, Crawford and Chester* (1) required him to do so. The respondent in this appeal has argued that if the case just mentioned is properly understood the Chief Registrar's decision was correct. The appellant relies upon the same case, and argues that, properly understood the principles there enunciated justify the disputed items. From this it may be gathered that *Chorley's* case, as I shall call it, is not a wholly satisfactory authority, and indeed that is true. We do not know of what the bill of costs in that case consisted, nor what items were eventually allowed or disallowed. Moreover the reporting of the case leaves something to be desired, I think, and it is noteworthy that the words of the Master of the Rolls as reported in the Law Reports, Vol. 13 Q.B.D. differ in a number of instances from his words as reported in the Law Journal Reports, (1884) Vol. 53. It is for instance very difficult to believe that the Master of the Rolls was correctly reported in the Law Reports at page 876, where these words appear

"The true rule seems to be that when a solicitor brings or defends an action in person, he is entitled *to the same costs as an ordinary litigant appearing in person*, subject to this restriction, that no costs which are really unnecessary can be recovered".

I note that the Chief Registrar quoted that passage in support of his order, and I do not for one moment blame him, but that passage is contrary to the tenor of everything else which the learned Master of the Rolls said, it is contrary to the decision of the Court of Appeal, and to the headnote of the case, which is word for word the same as the headnote to the report of the case when it was before the Divisional Court (1884) 12 Q.B.D. 452, which headnote the learned Master of the Rolls expressly approved as stating the law. That headnote reads

"When an action is brought against a solicitor who defends it in person and obtains judgment, he is entitled upon taxation to the same costs *as if he had employed a solicitor*, except in respect of items which the fact of his acting directly renders unnecessary."

It is worthwhile comparing also the reported words at page 552 (towards the bottom of the second column) in the Law Journal Report. I think I have picked out the corresponding passage —

"This seems to me to be the rule, that when a solicitor brings or defends an action in person he is entitled upon taxation to the same costs *as if he had not been a party:* subject however to this, that such costs are not to include any items which the union of the two characters of solicitor and party renders impossible or unnecessary.....".

I mention these matters because I think the passage in the Law Reports first quoted may mislead diligent readers of case law, and may possibly have misled the Chief Registrar. The parentheses are of course my own. It is indeed abundantly clear that the whole tenor of the judgments in *Chorley's* case, both in the Divisional Court and in the Court of Appeal was to this effect, that the solicitor who conducts his own case, and who accordingly does a solicitor's work, can be indemnified for that work by way of costs. The rule which applies to solicitors in England can fairly be said to apply to advocates in Sarawak, and it was no doubt because the respondents conceded this that they raised no objection to items 1 and 7 of this bill of costs. What the respondents say here is that "attendances in court or chambers" fall within the exceptions to the rule enunciated, and clearly there must be exceptions to that rule. The learned Master of the Rolls in *Chorley's* case is reported (in the Law Reports) to have used these words

"The unsuccessful adversary of a solicitor appearing in person cannot be charged for what does not exist, he cannot be charged for the solicitor consulting himself, or attending upon himself".

and again

".....no costs which are really unnecessary can be recovered. Of this kind are the costs of instructions and attendances".

Now if the Master of the Rolls has been correctly reported in the Law Reports he seems, fairly clearly, to be referring to attendances by the solicitor on himself, not necessarily to attendances in Court or Chambers. But Mr. Tan has properly pointed out that these words are reported in the Law Journal Report at page 552, some of which I have already quoted

"such costs are not to include any items which the union of the two characters of solicitor and party renders impossible or unnecessary, such as attendances upon himself and instructions to, or from himself; but in any case in which the attendance is capable of being attributed to either of the characters of party and solicitor, as, for example, attendance at the trial, then no such costs can be allowed".

With respect to the Law Journal, it seems to me that something has gone badly wrong with the reporting here. The whole structure of that passage is designed to contrast attendances by the solicitor upon himself with attendances at the trial. But the final words completely destroy the contrast. I confess that I can make no clear sense of that passage. It would be comprehensible to me only if the final sentence read "then such costs are to be allowed". I do not myself think however that we can gain much assistance from poring over the references to "attendances" in *Chorley's* case, well or badly reported as they may be. An attendance by a solicitor in the High Court of England, a proper item of charge if a solicitor is employed of course, is entirely different from the attendance in the High Court of Sarawak of an advocate. The English solicitor has no right of audience in the English High Court. He attends, and may charge for his attendance, because his presence is necessary as the instructor of counsel. He is there to assist counsel and it may frequently be necessary in the course of a case for counsel to confer with him. Those of us who have practised in England are familiar with the tug on counsel's gown by the solicitor. I can thus fully understand that where in England a solicitor conducts his own case in person before the High Court, a thing which he cannot do *qua* solicitor, but only as a litigant, a charge for sitting behind himself and tugging his own gown would properly be taxed off. It might well be otherwise if the solicitor litigant acting as his own solicitor, in England, briefed counsel for the trial, and as his own solicitor, attended Court with counsel. But here the advocate has the right of audience in the High Court, and "attendance" in Court covers the handling, conduct and argument of the case in Court. The advocate gets his scale fees allowed on taxation by way of two main items, the getting up item and the attendance item. Both getting up and attendance cover the exercise of professional skill, learning and industry. It is as much part of an advocate's work to argue and conduct a case in Court as it is to get the case up before trial. The two things are really two parts of a whole and I find it most singularly difficult to see why if an advocate litigant can charge for getting a case up, he cannot charge for conducting the case in Court once he has got it up. It is of course true to say that the advocate litigant must attend Court in any event as a mere litigant, but the item named "attendance" covers a great deal more than mere physical presence, and I am impressed by the words of Mr. Justice Denman in *Chorley's* case when that case was before the Divisional Court. He said (I hope he was correctly reported)

"I am not aware of any principle which ought to prevent a successful party who is a solicitor, and who does a solicitor's work, from being indemnified not merely for the time he must necessarily spend as a witness in his own case, but also for the pains, trouble and skill which he has to incur and to exercise in order to bring it to a successful conclusion."

If one substitutes "advocate" for "solicitor" and remembers that the conduct of a case in the High Court is part of an advocate's work in Sarawak, it seems to me that item 10 at least should have been allowed in principle and that this item does not form any exception to the broad rule in *Chorley's* case in spite of these puzzling and probably ill reported references to "attendances" which occur in the reports, and which have I think clouded counsel before the Chief Registrar. As to items 8 and 9, it must be conceded that attendance to obtain conditional and final leave to appeal makes the very minimum call on an advocate's skill and learning. Such attendance is however necessary, and the duties such as they are normally performed by an advocate. Mr. Thomas could have engaged another advocate to do this work and could have charged the respondent with the scale fees for the work. I think as he did the work himself he is entitled to charge for it. I have hesitated over item 11, an item of $10, but here again the attendance was an advocate's work, and as Mr. Thomas has pointed out he could scarcely have absented himself on the occasion of the delivery of judgment, he being an advocate of the Court.

I have based my decision on the principles, as I understand them, of *Chorley's* case, but I have not ignored the other cases quoted. *Read* v. *Gray* [2] is of little assistance save that I note that Mr. Justice Roxburgh took the same view as I do of the Law Reports version of the references to "attendances" in *Chorley's* case. *In re Wallis* [3] and *Stone* v. *Lickorish* [4] are cases which deal solely with costs as between mortgagee and mortgagor, and I do not find them enlightening in the present context.

There remains the case of *Tolputt* v. *Mole*.[5] That case I think assists the respondent in no way. The solicitor litigant in that case was also the registrar and taxing officer of the County Court which granted him costs, and he did indeed tax his own bill of costs. The case is disappointing, because as in *Chorley's* case we are not given the complete bill of costs. The solicitor was allowed an item for "instructions for brief", it appearing that he instructed counsel to conduct the case in the County Court. He himself disallowed an item for instructing himself to defend, and the County Court Judge taxed off an item of £1-1-0d. for "Attending Court when judgment was given for defendant". But this item was taxed off because it was the duty of the solicitor as registrar to attend Court when judgment was given, or so it appears from the judgment of Phillimore J. in the Divisional Court.

We further know that the solicitor was allowed three items of 3s. each which covered attending before himself as registrar to obtain the issue of three subpoenas. This weighty matter was solemnly argued and Phillimore J. dealt with it as follows —

"This latter class of charge seems to be a fixed fee representing payment for possibly some exercise of judgment as to the summoning of witnesses, at any rate for the actual drawing of the document and the attendance upon the registrar to procure its issue: the only fraction which could be objected to is this attendance."

Here then is some alternative support for my decision as to attendances in Chambers. But what we do not know, and it is really all that matters, is whether the solicitor put in an item for attendance in Court at the trial. The case is chiefly remarkable for the fact that four counsel engaged the time of five Judges over a matter of less than £20. My conclusion is that the Chief Registrar erred in disallowing in principle items 8, 9, 10 and 11 of this bill of costs. Some question as to quantum could perhaps be raised as to item 10, but the appeal was of some length and difficulty and I think the appellant is entitled to his charge of $200. The appeal is allowed and the sum allowed by way of costs on taxation shall include items 8, 9, 10 and 11 in full.

Costs of the appeal to appellant. Assessed at $40.

Appeal allowed.

RE POH THYE CO. LTD.

[O.C.J. (Thomson C.J.) April 30, 1962]

[K.L. — Companies (Winding-up) No. 17 of 1962]

Company—Compulsory winding-up—Company incorporated under Companies Ordinance 1940-46 carrying on business as sole agents for life insurance company—Whether carrying on "life assurance business"—Life Assurance Companies (Compulsory Liquidation) Act, 1962, ss.2(1) and 8 — Life Assurance Companies Ordinance, 1948 s.2—"Issue"—Meaning of.

On a petition for winding-up under the Life Assurance Companies (Compulsory Liquidation) Act 1962 the case for the petitioner was that the company was one that at the beginning of October 1961 was carrying on life assurance business and that it had failed to comply with a notice served on it under section 2(1) of the Act. The company contended that it was not so carrying on life assurance business and that consequently it was not competent to serve a notice on it and it was not required to comply with any such notice.

Held: (1) on the evidence the activities of the company did not come within the definition of "life assurance business" contained in section 2 of the Life Assurance Companies Ordinance, 1948 (which definition was incorporated into the 1962 Act by section 8 of the said Act);

(2) the expression "issue" in section 2 of the Ordinance must be read as implying the completion of a contract and accepting contractual liability.

Cases referred to:

(1) *Forsikringsaktieselskabet National (of Copenhagen)* v. *Attorney-General* [1925] A.C. 639, 642.

(2) *Levy* v. *Abercorris Slate & Slab Co.* (1888) 37 Ch. D. 260.

(3) *In re Perth Electric Tramways Ltd.* [1906] 2 Ch. 216.

PETITION FOR WINDING-UP.

R. H. V. Rintoul for the petitioner.

N. H. Chan for the Company.

Cur. Adv. Vult.

Thomson C.J.: This is a petition for the winding-up of a limited liability company called the Poh Thye Company Limited by virtue and under the provisions of the Life Assurance Companies (Compulsory Liquidation) Act, 1962.

The case for the petitioner is that the Company is one that at the beginning of October, 1961, was carrying on life assurance business and that it has failed to comply with a notice served on it under section 2(1) of the Act. It is the case for the Company that it was not carrying on life assurance business at the beginning of October, 1961, and that consequently it was not competent to serve a notice on it under the Act and it was not required to comply with any such notice.

If the contention of the Company that it was not carrying on life assurance business at the beginning of October, 1961, is correct, then I think it is common ground that the petition must be dismissed as the 1962 Act only applies to Companies who carry on life assurance business.

By section 8 of the Act expressions used in it which are not defined in it have the same meaning as in the Life Assurance Companies Ordinance, 1948, and by section 2 of that Ordinance "life assurance business" means "the issue of or the undertaking of liability under policies of assurance upon human life, or the granting of annuities upon human life".

The Poh Thye Company was incorporated under the Companies Ordinance in August, 1958. The Memorandum and Articles of Association are not before me, but according to the petition its objects are as follows:—

"To carry on the business of money lending and for these purposes to lend money and negotiate loans, to draw, accept, indorse and discount bills of exchange, promissory notes or other securities.

To carry on the business of Commission Agents, Shipping and Insurance Agents and all kinds of agencies or business which an ordinary individual may legally undertake."

Here it is safe to assume that if there was anything else in the objects of the Company which